



INTERIOR BOARD OF INDIAN APPEALS

Estate of Eugene R. Trust v. Acting Aberdeen Area Director,
Bureau of Indian Affairs

11 IBIA 203 (05/27/1983)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF EUGENE R. TRUST

v.

ACTING ABERDEEN AREA DIRECTER, BUREAU OF INDIAN AFFAIRS

IBIA 83-29-A

Decided May 27, 1983

Appeal from the awarding by the Acting Aberdeen Area Director, Bureau of Indian Affairs, of a lease of land held in Indian trust status pending final Departmental action to conclude the probate of an Indian estate.

Reversed and remanded.

1. Indian Probate: Compromise Settlements--Indian Probate:
Determination of Heirs by Waiver or Agreement

The acceptance by an Administrative Law Judge of a compromise settlement meeting the requirements of 43 CFR 4.207(a) constitutes a final determination of the heirs of a deceased Indian.

2. Indian Probate: Determination of Heirs by Waiver or Agreement--Leases and Permits: Generally

It is error for the Bureau of Indian Affairs to lease land in the estate of a deceased Indian under 25 CFR 162.2(a)(3) on the grounds that the heirs of the estate are "undetermined" when an Administrative Law Judge has accepted a compromise settlement of the estate entered into by all possible heirs and meeting the requirements of 43 CFR 4.207(a).

3. Indian Lands: Patent in Fee: Jurisdiction--Indian Probate:
Inheriting: Non-Indian

The Department of the Interior has no authority to hold land in Indian trust status for non-Indians. When non-Indians acquire Indian trust land through inheritance or devise, fee patent title should

normally be transferred immediately to such individuals pursuant to 25 CFR 152.6.

4. Indian Probate: Claim Against Estate: Source of Funds for Payment

Under 43 CFR 4.252, land remaining in Indian trust status after inheritance is liable for the payment of claims against the estate of the decedent only to the extent of income from its use. Trust funds held by the decedent or accrued to the estate at the time of death can be applied against claims regardless of whether that money will remain in trust after inheritance.

APPEARANCES: Frederick A. Moeller, Jr., Aztec, New Mexico, for appellants. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On May 2, 1983, the Board of Indian Appeals received the administrative record in an appeal filed by certain of the heirs of the estate of Eugene R. Trust (appellants). ^{1/} The appeal sought review of a March 10, 1983, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (BIA). The appeal was referred to the Board by the Acting Deputy Assistant Secretary--Indian Affairs (Operations) under the provisions of 25 CFR 2.19(b)(2) after a request from the appellants for expedited consideration. The decision appealed involves the leasing of property contained in the estate of Eugene R. Trust, pending final distribution of the estate.

Background

According to a March 10, 1981, interim order in the estate of Eugene R. Trust (decedent) entered by Administrative Law Judge Vernon J. Rausch, decedent, Crow Creek Sioux U-1215, was born on March 25, 1928, and died on September 15, 1978. At an April 26, 1979, hearing into decedent's estate, evidence of a will not meeting the requirements of 43 CFR 4.260 was introduced. Further evidence suggested that decedent may have married Pauline Wilson, a non-Indian, on February 21, 1977, in Mexico. The Administrative Law Judge found that if such a marriage could be proved, Pauline Wilson would be entitled to decedent's entire estate under the South Dakota laws of intestate succession. If the marriage could not be proved, decedent's heirs would be Donald Thompson; Stanley Thompson; Norman Thompson, Jr.; Martin Thompson; and Florence Heilman Hutchinson, all of whom are also non-Indian.

^{1/} Appellants include Donald Thompson; Stanley Thompson; Norman Thompson, Jr.; Martin Thompson; and Florence Heilman Hutchinson. Appellants state that they were unable to contact counsel for the remaining heir, Pauline Wilson, to determine whether she wished to join in the appeal.

On January 26, 1981, decedent's potential heirs agreed to a settlement under which each of them received a portion of the estate. Pursuant to this settlement, the Administrative Law Judge issued an "interim order setting will aside and approving stipulation" on March 10, 1981. That order states at pages 3-4:

ISSUES REMAINING

The probable heirs desire an expeditious ruling on their compromise agreement so that earnest efforts may be commenced to negotiate and settle with the remaining creditors the extent of their claims to obviate another hearing. By my ruling on the stipulated settlement, I in no way relinquish jurisdiction to rule on the validity and extent of the remaining creditor claims, and the Superintendent shall not distribute the estate until a final accounting can be had and a final order is issued.

INTERIM ORDER

NOW, THEREFORE, IT IS ORDERED:

1) THAT, the decedent's purported last will and testament dated July 6, 1970 be set aside.

2) THAT, the Stipulated Compromise Agreement dated January 26, 1981 is hereby approved.

3) THAT, upon a final accounting of the estate, a final order be issued distributing the estate pursuant to the terms of the stipulated agreement of the parties as follows:

To Pauline Wilson, a 20 percent share of the net estate, not to exceed money or property having a value of \$200,000.

To Stanley Thompson, 1/4 of the remaining net estate.

To Donald Thompson, 1/4 of the remaining net estate.

To Norman Thompson, Jr., 1/8 of the remaining net estate.

To Martin Thompson, 1/8 of the remaining net estate.

To Florence Hutchinson, 1/4 of the remaining net estate.

The estate remained under BIA control because no final order allowing distribution had been entered. The responsibility to lease the property pending distribution of the estate thus fell to the Superintendent of the Crow Creek Sioux Agency, BIA, under 25 U.S.C. § 380 (1976) and 25 CFR 162.2. On March 20, 1981, the Assistant Aberdeen Area Director, Natural Resources, wrote the Superintendent stating that:

It has been agreed, in view of the Interim Order Setting [Will] Aside and Approving Stipulation, issued by Judge Rausch

on March 10, 1981, that the heirs or their representative assume the negotiating of leases on all of those tracts of land in which Mr. Trust was sole owner or owned the major interest.

Since the Judge retains jurisdiction of the estate pending final determination, leases must be written on Bureau forms and subject to approval by the Superintendent, with all rentals to be deposited and credited to the IIM estate account.

In accordance with this agreement, appellants participated in negotiating the lease of the land in the estate for 1981. It is not clear from the record whether or to what extent appellants participated in the leasing of the land for 1982. However, on January 20, 1983, BIA leased the land for 1983 to the prior tenant before the expiration of the 1982 lease, without notification to or participation by appellants, and without advertising the availability of the lease. Appellants seek review of the March 10, 1983, decision of the Acting Aberdeen Area Director upholding this lease.

Discussion and Conclusions

The BIA cites 25 CFR 162.2(a)(3) as authority for it to lease the property in this estate without participation by appellants. 2/ This regulation states: "The Secretary may grant leases on individually owned land on behalf of * * * the undetermined heirs of a decedent's estate." This argument is based on BIA's interpretation that the Administrative Law Judge's interim order of March 10, 1981, in the estate of Eugene R. Trust was not a final decision in the estate and did not determine decedent's heirs. 3/

[1] The Board finds that this interpretation of the March 10, 1981, order is in error. Although the order is not a final disposition of the estate and distribution has not occurred under it, it does constitute a final determination of the heirs. Decedent's potential heirs were identified at a hearing held in 1979 and all of those individuals entered into a compromise settlement regarding distribution of the estate in 1981. The Administrative Law Judge's order demonstrates that the settlement met the requirements of 43 CFR 4.207(a). The Administrative Law Judge accepted that settlement agreement in his interim order and therefore finally determined the heirs of Eugene R. Trust. 4/ The Administrative Law Judge retained jurisdiction only for the limited purpose of receiving a final accounting of the estate.

2/ The Mar. 10, 1983, decision states that the prior practice of permitting participation by the heirs, established on Mar. 20, 1981, by the memorandum of the Assistant Aberdeen Area Director, quoted supra, was "a courtesy" and had been abandoned because "of past experience, whereby only minimal interest was shown and only one bid received for the land in the 1982 advertisement."

3/ It would appear that this interpretation was also shared by the Administrative Law Judge. See letter of Jan. 27, 1983, from Vernon J. Rausch to Norman Thompson.

4/ The Administrative Law Judge did not, however, "issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement," as is required by 43 CFR 4.207(c). As is discussed, infra, it appears that the Administrative Law Judge's failure to issue such a final order may be error.

[2] It was, therefore, error for the BIA to lease the property of the estate under the provisions of 25 CFR 162.2(a)(3) on the grounds that the heirs were "undetermined." Under such circumstances, BIA's authority to lease property without the consent of the heirs would normally be found in 25 CFR 162.2(a)(4), which states that the Secretary may lease land on behalf of "the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees." This regulation provides that when the heirs of a deceased Indian have been determined and the property remains in trust status, those heirs have the right to negotiate a lease of the land or to participate in BIA's negotiations, before BIA unilaterally enters into a lease. See Morgan v. Aberdeen Area Director, 5 IBIA 14, 83 I.D. 20 (1976).

[3] However, the Board, while recognizing that it does not have the probate record in the estate of Eugene R. Trust before it, questions the Departmental authority to continue to hold this land in trust status. It is clear from the Administrative Law Judge's March 10, 1981, interim order that all of decedent's heirs are non-Indian. The Department of the Interior owes no Indian trust responsibility to non-Indians and has no authority to hold land in Indian trust status for non-Indians. Bailess v. Paukune, 344 U.S. 171 (1952); Chemah v. Fodder, 259 F. Supp. 910 (1966); Estate of Dana A. Knight, 9 IBIA 82, 88 I.D. 987 (1981); Bowen v. Superintendent, Northern Cheyenne Agency, 3 IBIA 224, 82 I.D. 9 (1975). It, therefore, appears that fee title to this land should immediately be transferred to the non-Indian heirs in accordance with 25 CFR 152.6.

[4] Apparently, the Administrative Law Judge has not issued a final order in this estate on the grounds that creditors' claims in excess of \$200,000 remain unpaid. ^{5/} Regulations governing the payment of creditors' claims in the probate of Indian estates are found in 43 CFR 4.250-.252. Section 4.252 specifies what property is subject to the payment of creditors' claims.

Claims are payable from income from the lands remaining in trust.
Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at the time of death, including bonds, unpaid judgments, and accounts receivable, may be used for

^{5/} Although not certain, it would appear that the Administrative Law Judge has retained jurisdiction in this estate under the provisions of 43 CFR 4.251(d) which provides:

"If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets."

This regulation permits Departmental retention of jurisdiction only over land that properly remains in Indian trust status.

the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

This regulation establishes that land remaining in trust status is liable for the payment of claims against the estate only to the extent of the income from its use. Trust funds held by the decedent or accrued at the time of death can be applied against claims regardless of whether that money will remain in trust after inheritance. 6/

Again, acknowledging that the Board does not have the probate record before it, the Board sees no jurisdiction in the Administrative Law Judge to pay any creditors' claims in this estate except to the extent of trust funds on hand, or accrued but unpaid, on September 15, 1978, the date of decedent's death. Therefore, the Board also sees no authority for the Administrative Law Judge to retain jurisdiction over this estate. Any debts of the estate remaining after fee title is transferred to the non-Indian heirs are properly the subject of state court adjudication. Cf., Akers, supra, 1 IBIA at 258, 79 I.D. at 409.

The estate of Eugene R. Trust is not before the Board. Consequently, the preceding observations about that estate are dicta. However, the Board would strongly suggest that the Administrative Law Judge, either sua sponte or on motion of the heirs, reconsider his retention of jurisdiction over that estate.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 10, 1983, decision of the Acting Aberdeen Area Director upholding the grant of a lease of the land held by the United States in Indian trust status for the estate of Eugene R. Trust is reversed. This case is remanded to the Bureau of Indian Affairs for appropriate action consistent with this decision.

//original signed

Wm. Philip Horton
Chief Administrative judge

We concur:

//original signed

Jerry Muskrat
Administrative Judge

//original signed

Franklin D. Arness
Administrative Judge

6/ See Estate of John J. Akers, 1 IBIA 246, 79 I.D. 404 (1972); Solicitor's Opinion M-36121, 61 I.D. 37 (1952); Regional Solicitor's Opinion re Estate of Celeste Red Thunder (Oct. 12, 1967); Memorandum Opinion of Regional Solicitor re R.S. #7501, Estate of Antoine Bordeau, Jr. (June 9, 1967).